

# **Dispute Resolution Commission**

## **MINUTES**

**November 18, 2016  
NC Judicial Center, Raleigh, NC**

Members present: Cash, C. Anderson, Armeña, Caldwell, T. Clare, Dollar, Evans, Hicks, Long, McCullough, Nease Brown, Ponton, Seigle, and Vincent. Ex-officio members, guests, and staff present: Beason, Henderson, Igou, Laney, Lee, Little, Mueller, Minor, Nease-Brown, Schafer, Stroud, Turner, Hopkins, Ratliff, and Robinson. The following sent their regrets: Holland, J. Clare, Leazer, Nesbitt, Tolbert, and Webb.

Judge Cash welcomed everyone to the meeting, noting that a hearing had also been held the day before. He indicated that he was filling in for Judge Webb, the Commission's newly appointed chair who was working outside the country. He thanked everyone for their support during his term as chair and noted that he looked forward to working with the new chair. Judge Cash next introduced a guest, Tara Mueller, a newly certified MSC mediator, and asked everyone to go around the room and introduce themselves for Ms. Mueller's benefit.

Judge McCullough administered the oath of office to Judge Evans and Mr. Ponton, both appointed to second terms. Judge Cash noted that Ms. Nease-Brown had been appointed, but would not be sworn in since the State Ethics Commission had not completed its routine vetting process.

Judge Cash next called for approval of the minutes. Mr. Clare said the minutes incorrectly indicated that J. Clare was absent from the August meeting. The minutes were otherwise approved as submitted. Judge Cash next called for Ms. Ratliff's office report. She began with a fiscal year-end report, noting that this information would typically have been delivered at the August meeting near the close of the fiscal year. However, given the number of items on the August agenda, Judge Cash has asked the report be delayed. She reported that the Commission collected \$221,552.00 in certification and certification renewal fees during FY 2015/16 and had expenditures of \$255,799.77, resulting in a deficit of \$34,247.77. She added that the deficit amount was covered by unspent revenue accumulated in previous fiscal years and which had been carried forward into 2015/16. After being reduced by the deficit amount, she said that the unspent revenue amount that was carried forward into 2016/17 totaled \$117,657.23. Ms. Ratliff explained that personnel costs accounted for the bulk of Commission expenditures with personnel expenses totaling \$222,204.67. She added that personnel costs had increased dramatically with the creation of the Deputy Director position in 2013, but the growth in the number of ex-officio members in recent years had also contributed to the rise. Lastly, Ms. Ratliff called attention to a document that looked back at a five year history of the cumulative unspent revenue amount and the rate at which it has been depleted. Next, Ms. Ratliff updated the Commission on the certification renewal period for 2016/17. She noted that so far renewal was strong with collections to date of approximately \$207,000.00, on target with recent years. (That figure will be supplemented with fees collected for newly issued certifications throughout the year.)

Ms. Ratliff next reported that staff had spent a great deal of time on the website overhaul this quarter. She explained that the material currently posted had been carefully reviewed with an eye toward both winnowing and reorganizing it. She added that Mr. Armeña would have a much more comprehensive report on the website. She noted also that Commission materials designed for the use of judges and court staff had been added to Juno, the AOC's internal website. Ms. Ratliff added that CME was off to a strong start with 11 program applications approved. She added that over 100 mediators had already completed 1-2 hours of CME. Ms. Ratliff thanked Ms. Hopkins for her work, noting that she was spearheading the Commission's CME effort. Staff, Ms. Ratliff reported, is continuing to work on revising DRC and program rules. Lastly, as required by the SEC, Ms. Ratliff read into the minutes the names of members who had completed their 2016 SEI long form and the SEC's evaluation: Judges Caldwell, Evans, and McCullough and Mr. Armeña -- no actual or potential for a conflict of interest. Judge Cash, Mr. Long, and Ms. Dollar -- no actual conflict, but the potential for a conflict existed, but did not prohibit service on the Commission.

Judge Cash gave the Executive Committee report. He indicated that he had attended the District Court Judges Conference in Asheville this fall and had spoken about Commission sponsored legislation that would bring mediation into district civil court. He was asked about the judges' response to the legislation and said there was really no way to gauge it.

Judge McCullough reported for the Mediator Certification and Training Committee. He said he was pleased that CME was moving forward and that the concern that there might be inadequate numbers of providers did not appear to be materializing.

Judge Caldwell reported that no business was before the MSC Program Oversight Committee and it had not met that quarter. Mr. Long also had no report for the District Court Oversight Committee.

Mr. Clare reported for the Standards and Advisory Opinions Committee. He noted there had been no comments on AO 32 on interpreters which was approved for re-posting at the August meeting and it was given final approval. Mr. Clare next touched on proposed changes to the MSC/FFS Rule 8 certification requirements relating to attorney qualifications. He reported that the Committee is still considering this matter, i.e., what the effect of State Bar changes in attorney education and licensure requirements should have on mediator certification requirements. Mr. Clare next called attention to AO 33 which had also been posted for comment. He reminded everyone that the scenario described in this opinion involved a mediator who wanted to give mouse pads to attorneys who had selected her or that she hoped would select her to mediate. He noted several comments had been received and were included in the meeting packet. Judge Vincent observed that the comments resonated with her and she thought it might be more appropriate to set a limit, say \$20.00 on gifts, rather than a blanket prohibition. Judge Turner noted there had been much discussion earlier on this topic. He said what persuaded him was the suggestion that a party who walked into the office of his/her adversary's lawyer and saw calendars, mouse pads, and pens with the mediator's name on them everywhere, could easily jump to the conclusion that the mediator was not neutral with respect to that firm and its clients. Ms. Seigle asked Ms. Ratliff whether any research had been done on this by staff. Ms. Ratliff responded that she did research the topic several years ago and that she recalled that most of the agencies/states she contacted applied a de minimis standard to gifts rather than prohibiting them outright. Ms. Nease Brown noted that this is really an appearance issue. Moreover, she was uncomfortable with the Commission in the role of deciding what is "de

minimis". Mr. Little suggested that "bidding wars" were inevitable. Ms. Dollar concurred that rather than looking at the value of mouse pads, cookies, and the like, it is more important for the Commission to focus on maintaining the integrity of the mediation process. If a party sees a mediator's pens, calendars, and coffee cups in a lawyer's office, she believes that party will conclude that the mediator will favor the firm's client. Following more discussion of AO 33, it was adopted as posted.

Mr. Clare next reported that the Committee had been discussing revisions to Standard III and confidentiality. He reported that circumstances had come up twice now where a mediator was subpoenaed to testify at a hearing to enforce an agreement reached at mediation, but was unable in the face of Standard III confidentiality restrictions, to defend himself in court when his conduct as mediator was criticized. Mr. Clare explained the Committee was still addressing those situations. In the meantime, he noted some proposed changes to Standard III designed to address other concerns before the Committee. He first called attention to the proposed inclusion of a new subsection III.D(4). Section III.D(4)(i), he explained, clarifies that when a mediator has a complaint filed against him with the Commission or State Bar, that the mediator may reveal otherwise confidential information learned in mediation for the purpose of defending him/herself against the complaint. It was suggested that the language in new (i) should be expanded to say, "... the North Carolina State Bar or other professional licensing boards..." Mr. Clare next noted the inclusion of new III.D(4)(ii) language designed to permit a mediator to defend him or herself in court when a lawsuit had been filed against the mediator relating to his/her conduct. Next, Mr. Clare noted proposed, new section III.F designed to permit a mediator or mediation observer to report attorney behavior in mediation to PALS when it appeared that the attorney might have a problem with alcohol or drugs. Mr. Clare added that the Committee also proposed striking existing section F in lieu of the proposed new revisions. The proposed changes to III.D(4)(i) with the additional language noted above relating to other licensing bodies and to III.D(4)(ii), and the addition of new F and the striking of the current F were all approved (see attached revised Standard III which is incorporated in these minutes).

Judge Anderson reported for the Grievance and Disciplinary Committee. He began by thanking Judge Cash for his service. Judge Anderson noted that a hearing had been held yesterday in an appeal of a GDC Committee determination to deny an application for DCC certification and that another appeal of sanctions imposed was scheduled to be heard at the February meeting. He added that a mediator whose Petition for Reinstatement of his mediator certification had been heard by the Commission in October, 2015, with the matter still pending, would not be re-certified due to the Commission recently learning of additional adverse action taken by the State Bar against the petitioner. Judge Anderson next turned his attention to more recent Committee activity, noting that the Committee had addressed a number of ethical matters this quarter. He briefly reported on a complaints filed against a non-certified community mediator and an AOC custody mediator. He noted that both had been dismissed on the basis that the Commission lacked jurisdiction, but that staff had made an effort to get both complaining parties in touch with the proper authorities. He noted also that a complaint had been filed relating to a certified DCC mediator and that related principally to executive actions she had taken not as a mediator, but in her role as a center manager. If the actions complained of were true, Judge Anderson suggested they could arguably be said to bring discredit on the Commission, courts and program (DRC Rule VII). Judge Anderson noted that the complaint was still being investigated, but raised important issues about how far the Commission should go in

regulating community mediation centers, i.e., does the Commission have any control over center managers, center operations, or Boards and what is the role of the MNNC. Mr. Minor commented that he believes the quality and integrity of the mediator should be the DRC's principal concern. Lastly, Judge Anderson reported that two new complaints had recently come in and were in the very early investigative stages. Both of these complaints also involved community mediators and Judge Anderson noted whether such complaints might be better addressed not by the Commission, but by the CDCJ.

Mr. Little gave the legislative report. He began with H.B. 303, reminding everyone that this bill would have modified the Commission's enabling legislation. Mr. Little asked the Commission to vote to reintroduce HB 303, but to do so through AOC channels. The motion was approved. Mr. Little next reported that HB 38 has stalled in the Senate. This bill, he reminded, would have created a mediation option in district, civil court. Ms. Seigle asked whether the district court judges were now backing the proposal. Judge Cash indicated that has not happened. Judge Cash called for a vote. The motion was approved, with Ms. Seigle dissenting. She noted for the record that she did not think the Commission should reintroduce this legislation until it had first assessed the district court judges concerns, if any, and determined whether they supported the proposal. Mr. Long asked whether the arbitration program was not still in effect. He suggested that a simple fix would be to leave the arbitration program as is and let mediation be available in cases above a certain limit. Judge Turner suggested that district court judges were not supportive of the jurisdictional change in the first place and didn't want to have to develop and oversee a new option and new rules. Judge Cash noted that he heard a lot of concern about who will administer the mediation option, that the judges and their staffs are already overworked. Ms. Seigle noted also that statistics and anecdotal information suggest that the arbitration program is working well.

Judge Cash next called for Ad hoc Committee reports: Mr. Armeña reported for the Ad hoc New Media Committee. He gave a detailed Power Point presentation on the proposed new reorganization of the website. He noted that in reorganizing the materials, staff had worked hard to effectuate the changes that summer intern Scott Sutton had advocated based on information gleaned from his mediator survey, focus groups and in depth interviews. Commission members suggested a few minor tweaks to labels and headings and authorized the Committee to work with AOC staff to implement the proposed restructuring. Mr. Armeña indicated that once the AOC staff were working to overhaul the website, the Committee would turn its attention to social media, including the development of a social media policy for the Commission. Mr. Armeña received several compliments on his presentation.

Ms. Seigle reported for the Ad Hoc District Criminal Court Mediation Program Committee. She explained that she had hoped to have some legislation for the Commission to review, but the Committee had not been able to make any progress during its lunch time meeting.

In the absence of Stephanie Nesbitt, Mr. Igou reported for the new Clerk Mediation Pilot Program Committee. He reported that the Commission and Section had established a new, joint committee to create a pilot in an effort to reinvigorate the Clerk Mediation Program. He noted that clerks in three counties, Mecklenburg, Asheville, and Wake, had agreed to participate as pilot sites.

Judge Cash asked Ms. Seigle if she had any updates on the Chief Justice's Commission on the Administration of Law and Justice. She responded that the time period for public comment has been closed and Commission's committees were drafting their final reports.

Judge Cash next called for ex officio reports: Mr. Igou reported for the Section that its Collaborative Law Committee has a nationally recognized expert on collaborative law coming to North Carolina to speak at the Section's Annual Meeting scheduled for March 17, 2017, in Pinehurst at the Pinehurst Resort. Mr. Minor reported for the MNNC that they are moving forward in an effort to get all MNNC affiliated DCC mediators certified by the Commission. He noted that a training is scheduled for December 6 where they will receive instruction on DCC program enabling legislation, rules and the Standards of Conduct. He noted that Ms. Ratliff and Ms. Robinson were scheduled to attend that meeting. Mr. Schafer reported for the IC that it hosted a program with a CME component last month and had good attendance. Judge Stroud reported that the Court of Appeals Mediation Program is functioning well and she hopes to get some more judges trained beginning in January.

Judge Cash reminded everyone that the next meeting will be February 24, 2017, in Raleigh, to accommodate a hearing scheduled to be held the day before. There being no further business, Judge Cash adjourned the meeting.

# **Dispute Resolution Commission**

## **MINUTES**

**Friday, August 19, 2016**

**NCJC Raleigh, NC**

Members present: Cash, C. Anderson, Armeña, Caldwell, T. Clare, Dollar, Gullick, Hicks, Long, McCullough, Ponton, Seigle, Vincent and Webb. Ex-officio members and staff present: A. Anderson, Beason, Henderson, Holland, Hopkins, Laney, Lee, Little, Minor, Nease-Brown, Nesbitt, Ratliff, Robinson, Schafer, Stroud, Tolbert, and Turner. The following sent their regrets: Evans and Leazer. Guests present: DRC Summer Intern Scott Sutton, Section member Rick Igou, AOC Communication staff Mike Lotz and Sam Tate, and Tom Murry, AOC Chief Counsel for Governmental Affairs.

Judge Cash welcomed everyone and introduced guests. He then recognized Ms. Gullick whose term is expiring on September 30, 2016. He presented a plaque to her thanking her for her long service as a member, Committee chair, and Vice-Chair of the Commission.

Judge Cash next called for approval of the May, 2016, minutes. Mr. Armeña moved to insert some text in the last paragraph on page 2.

Mr. Armeña next gave a Power Point presentation...He reported that Judge Cash had approved the suggestion and the Committee has been renamed the New Media Committee. Mindful of previous meeting discussions regarding judges serving on the Commission, he reported that the Committee first reviewed ten recent Judicial Opinions issued in other states as they relate to Judges and Court personnel. He notes that since February's meeting, staff has procured for the committee substantive research and model policies in this area from ADR programs in other states, received input from at least thirteen programs around the country during extensive telephone interviews, and elaborated for members, pertinent portions of Ms. Ratliff's summary distributed in this meeting's materials. Most of the sources the Committee consulted, he noted, were favorable to the use of new media by the courts...

The minutes were approved with Mr. Armeña's additions.

Judge Cash next introduced Tom Murry, AOC Chief Counsel for Governmental Affairs. Mr. Murry discussed his role and explained that he is available to assist the Commission in its efforts to communicate with legislators and to help shepherd legislation of interest to the Commission through the legislature. He cited G.S. § 120C-500(d), which provides:

(d) The Chief Justice of the Supreme Court shall designate at least one, but no more than four, liaison personnel to lobby for legislative action for all offices, conferences, commissions, and other agencies established under Chapter 7A of the General Statutes...

Ms. Seigle stated that she believes it is extremely important that the Commission's legislative efforts be channeled through Mr. Murry. Judge Cash indicated that Mr. Little will be working with Mr. Murry in the future. Mr. Minor also expressed his support for a more coordinated effort in the interest of the greater good.

Mr. Murry then called attention to the NC Commission on the Administration of Law and Justice (NCCALJ) and noted that it will be making recommendations to the legislature relating to dispute resolution. He stressed the importance of the NCCALJ's work and the fact that such efforts to comprehensively evaluate our courts and plan for their future have traditionally occurred only every 25-30 years. He encouraged Commission members to read the NCCALJ's reports and to make comments by the end of the month. Ms. Ratliff noted that an email with links went out to members and ex-officio members earlier this month alerting them to the reports and the comment deadline. Ms. Clare expressed concern that the comment period was so short. She suggested it might be more effective for members to review the reports and have the Commission make a collective comment. Judge Webb noted that he and Ms. Seigle were members of the NCCALJ and would make sure that DRC members' comments were included, even if they arrived late.

Judge Cash next turned the floor over to Mr. Armeña, New Media Committee chair. Mr. Armeña called attention to the *NC DRC New Media Research Report (Report)* (attached *Report* and recommendations are incorporated in these Minutes) and introduced the *Report's* author and DRC summer intern, Scott Sutton. He asked Mr. Sutton to report on his research. Mr. Sutton began by thanking the Commission for the opportunity to conduct research this summer and to complete the requirements for his master's degree in conflict resolution. He noted that he been charged both with taking a critical look at the Commission's website, [www.nncdrc.org](http://www.nncdrc.org), and with considering whether use of social media could assist the Commission in communicating better with its various constituent groups.

Mr. Sutton reported that his research involved sending a survey to all certified mediators, conducting two focus groups, and completing 13 in depth interviews. He described the Commission as having six main audiences – certified mediators, certification applicants, attorneys, court staff, pro se parties, and the litigating/general public. His research, he explained, was designed to determine how well the Commission and its office were communicating with these groups and, if there were deficiencies, how they could be addressed through enhancements to the website and the possible use of new media channels. Mr. Sutton reported that the news is largely positive -- Commission staff and the website are meeting the information needs of most of the various audiences. However, there was input that suggested that the Commission should have more outreach to pro se parties and the general/litigating public, i.e., that it should be doing more to raise the visibility of mediation in general.

Mr. Sutton reported there was a consensus on the part of mediators that the website had good content. However, there was disagreement on whether it was easy to access that information. Mr. Sutton noted that familiarity with the site seemed to be key, i.e., those who used it most found it to be intuitive and user friendly and those who used it least found navigation difficult. Mr. Sutton noted that the NCCALJ's reports are promoting more robust websites and increased use of social media. He also noted that younger Americans are more likely to use social media, making it an imperative for the future. He acknowledged that most certified mediators did not express a strong interest in social media, but those who did were very strong proponents. He observed that most certified mediators are older and may

not be interested in using new technology in their practices. Mr. Little noted the Report suggests that older mediators are not using technology because of their age. He suggests that perhaps they have had negative experiences with it. As younger mediators come on board, Mr. Sutton believes that there will be an increasing expectation that the Commission and its office communicate through social media.

Mr. Sutton reported that some court staff use the website regularly while others said they prefer to speak with DRC staff when they have questions or need assistance. He added that court staff reported most often calling or visiting the website when they were seeking information on behalf of pro se parties. He noted there was a consensus among court staff and others that information on the website intended for pro se parties should be augmented and made easier to access. Court staff were, he added, not particularly interested in communicating with the Commission or its staff via social media.

While users were largely positive about website content, Mr. Sutton suggested that functionality and navigation need improvement. Judge Webb asked what could be done to make information more accessible. Mr. Sutton suggested more clearly marked portals.

Ms. Seigle said she thinks the AOC does a great job with social media, particularly with re-tweeting. In fact, she noted that she and others had been tweeting during this discussion, and the AOC had already retweeted some of the messages. Mr. Laney asks how a litigant would learn about a Commission Facebook page or Twitter feed? Mr. Sutton responded by explaining how some of the platforms work and said that mediators might opt in as followers. Ms. Nease-Brown suggested that mediators may not want to be put in a position of having to rely on social media to receive important communications such as rule changes. Mr. Sutton agreed and said emphatically that the Commission should keep up its more traditional means of communication. Mr. Armeña agreed, suggesting that social media would be a supplemental tool only and that email would likely remain the Commission's primary mode of communication. Ms. Clare raised concerns about trolling and ways to control inappropriate or offensive comments. Mr. Sutton suggested that DRC channels be configured in such a way that users cannot respond to Commission posts and, in the case of Twitter, they could retweet Commission posts, but not comment on them. Ms. Ratliff pointed out that another important reason to use social media is to enable the Commission to learn what others are saying about it online and to respond using the Commission's channel(s), if that is deemed appropriate. Ms. Anderson noted, that, like Ms. Seigle, she likes the immediacy of Twitter. Mr. Little asked whether other regulatory agencies are using social media. Ms. Ratliff responded that many courts and the Alabama Office of Dispute Resolution are using it. Mr. Little asked what Alabama was posting and Ms. Ratliff responded: mediator training information, links to newsletters, announcements of policy/rule changes, information pieces, e.g., an article on the use of dispute resolution in the film, *Woman in Gold*.

Mr. Armeña then directed attendees to Mr. Sutton's recommendations. He noted that Mr. Sutton had made both short and long term recommendations relating to the website and new media. In the short term, Mr. Sutton suggests a facelift of the website's main page, raising the visibility of information directed at pro se parties, and cleaning up "stranded" pages, i.e., those not often visited. As for new media, he recommends the Commission establish Linked-In and Twitter channels and disable its YouTube channel, opting instead to piggy back on the one available through the AOC. Lastly, he recommends that staff be equipped with a product like Hootsuite to coordinate its new media channels.

Mr. Armeña made a motion to move forward with activities 1-4 of the short term recommendations for the website on page 7 of the *Report*. He proposed deferring the long-term recommendations also beginning on page 7 until such time as the AOC has finalized its plans for overhauling [www.nccourts.org](http://www.nccourts.org). Ms. Gullick asked about costs to implement the recommendations. Ms. Ratliff said the DRC had never been charged for such services and Mr. Lotz and Mr. Tate affirmed. Judge Cash clarified that the motion was to authorize the Committee to work with AOC staff to implement the short term recommendations. The motion was seconded and was passed.

Mr. Armeña next called attention to the short term new media recommendations on page 9 of Mr. Sutton's Report. Mr. Sutton noted that Linked-In and Twitter were not really conducive to trolling. Judge Anderson asked whether litigants could use a platform to complain about a mediator? Mr. Sutton responded that there is nothing to stop them from doing that now and being active on new media would give the DRC more opportunity to be aware of such postings. Ms. Ratliff clarified that the public will not be able to post on the Commission's accounts. Ms. Seigle noted that the DRC will need to explore with the AOC whether it should have its own Twitter account or piggy back on the AOC's channel. Judge Cash asked about any risks the DRC might be exposing itself to in opening a Twitter channel. Mr. Lotz responded that the public is already likely commenting on the Commission and this is the Commission's opportunity to become aware of such posts and take steps to address them on its own channel, if appropriate. Judge Vincent suggested it would be important for the Commission to have policies in place as to how it will implement and operate its channels. She wants the Commission to view any social media policy adopted by the Committee. Mr. Sutton noted there may likely be a "parent-child" relationship between the AOC and DRC's social media policies. Judge Vincent moved to adopt the short term new media recommendations, but implement them only after the social/new media policy issue has been addressed and any resulting policy approved by the Commission. The motion was adopted.

Mr. Sutton's presentation concluded, and Judge Cash reported for the Executive Committee. He began with a discussion of appointments noting that that Messrs. Armeña and Ponton are eligible and willing to be reappointed. Ms. Gullick has completed two terms and is not eligible to be re-appointed. He added that the Executive Committee is also reviewing the DRC Rules and considering some changes. Judge Cash noted that the Executive Committee had met over the lunch break to discuss the budget and there would be a full report in November after the Committee had more time to digest the numbers.

Judge McCullough reported for the Mediator Certification and Training Committee. He first called attention to the DRC Policy on the Implementation of Mandatory CME. He indicated it had been posted for comment, there were no comments, and it was now ready to be approved. The Policy was given final approval. He then called attention to the Procedures for Sponsors of CME Programs document which was also posted for comment. Ms. Hopkins noted that she and Ms. Robinson had met Catherine Peglow at the State Bar and Ms. Peglow had raised concerns about the requirement that course materials be forwarded with the application. Ms. Peglow suggested that full course materials were usually developed only after CLE approval. Judge McCullough agreed with Ms. Hopkins that the DRC should align its requirements with those of the State Bar and initially require only a course outline or agenda. Judge McCullough called for approval and the Procedures were adopted for further comment with the revisions suggested by Ms. Hopkins based on Ms. Peglow's

comments. Ms. Hopkins spoke briefly about CME training programs approved to date. In particular, she thanked Ms. Dollar for her help in getting a Watauga County Bar CLE with a mediation component videotaped. Ms. Dollar noted the AOC is seeking to expand its training outreach and hoped to have other similar opportunities to assist mediators, either by developing training or videotaping training offered by others. Mr. Little mentioned that both the NCBA and IC are developing CME offerings. Ms. Anderson stressed the importance of capturing attendance at training sessions.

Judge Caldwell reported that the MSC Program Oversight Committee has been quiet this quarter. He said he was present when the Chief Justice mentioned ODR – online dispute resolution – in a recent talk he had given and suggested it will become more prevalent in the future. He said parties take their disputes to on-line mediators and the process is paperless. Ms. Anderson reported that she had participated in a successful on-line mediation and had enjoyed the experience.

Mr. Long reported for the District Court (FFS) Program Oversight Committee. He said that efforts to get judges, DA's, and others to evaluate the District Criminal Court Video had not been fruitful, less than a dozen completed surveys were received.

Ms. Gullick reported for the Standards and Advisory Opinions Committee. She first called attention to an on-line survey of all certified mediators regarding mediator use of interpreters and translators. Though only 25 responses had been returned, she suggested that she believes this issue will continue to develop and that the Commission needs to stay on top of it. She next called attention to some proposed changes to MSC/FFS Rule 8. She reminded those present that the State Bar had recently approved a change in its rules to permit graduates of non-ABA accredited law schools to sit for the NC State Bar if they had been licensed to practice law in another state for at least 10 years (this was a ~~10~~ time and not an experience requirement). Following that change, Ms. Gullick noted that the Commission had approved a change to MSC/FFS Rule 8 permitting certification of applicants who graduated from non-ABA accredited law schools, but were licensed to practice law in another state and had five years of experience practicing law (the proposed revision has not yet been submitted to or approved by the NC Supreme Court). Ms. Hopkins added that the State Bar was now revisiting this rule to consider eliminating the 10 year time period. She noted that staff had determined to bring the matter back to the Committee's attention because of this development and because, in revising Rule 8, the Commission had indicated that it intended to parallel the State Bar's changes. Staff, she said, felt that had not happened, i.e., the State Bar's changes allowed graduates of non-accredited schools only to sit for the Bar whereas the Commission's changes allowed them to be certified. Judge Cash reminded the group that Ms. Seigle had raised concerns earlier about loosening this requirement and suggested that the Commission need not track State Bar rules if it meant eliminating graduation from an ABA accredited law school and potentially lowering certification standards. Ms. Gullick said the Committee recommendation was to table the matter until such time as the State Bar has acted. The Commission adopted that recommendation.

Ms. Gullick next called attention to proposed AO No. 32 which addresses a mediator's responsibility for ensuring that effective communication occurs in cases involving pro se, non-English speaking parties. She noted that the Opinion had been adopted at the May meeting, posted for comment, and a thoughtful comment had been forthcoming. The Committee, she explained, had decided to further amend the AO based on the comment. Ms.

Gullick noted that this was a very thorny issue. Ms. Seigle expressed frustration that the AOC does not make interpreters available in district criminal court. Mr. Beason suggested that the AO provides a perfectly legitimate accommodation. The simple question is can the person (friend, relative who attends the mediation) serve as an interpreter? Ms. Gullick moved to substitute this version for the one approved earlier. It was approved and will be posted for comment.

Lastly Ms. Gullick addressed proposed AO No. 33. The scenario presented in that AO was that a mediator wanted to include a mouse pad bearing her website with the holiday cards she was mailing to her attorney clients and prospective clients. Ms. Gullick noted that Standard VII.H, which relates to impartiality and conflicts of interest, sets up a bright line relative to gifts, prohibiting any gift, except those such as sodas, cookies, or other food items served during the mediation and intended to further the process or gifts intended to reflect cultural norms. The new AO, she suggests, clarifies that even *de minimis* gifts, such as mouse pads, as not permitted under Standard VII.H for the purpose of generating referrals. Mr. Laney questioned whether the bright line was really necessary --- did the giving of a pen or a mouse pad really raise a conflict of interest or otherwise call impartiality into question. Mr. Little noted that this question had been extensively discussed in 2014. Ms. Clare said the turning point for her was Ms. Dollar's comment in 2014, to the effect that a party doesn't see just a calendar hanging on the wall in the office of an opposing lawyer. Rather, s/he sees the name of the mediator on the calendar and, by extrapolation, the relationship between the attorney and the mediator. That, Ms. Clare, suggests, creates the perception of a conflict. Following additional discussion, AO 33 was approved for comment. Judge Cash thanked Mr. Laney for providing an alternate perspective.

Judge Anderson reported for GDC Committee. He noted that a new complaint had come in regarding a public records mediation and that an appeal of a GDC decision to deny an application for DCC mediator certification would be heard in November.

Ms. Seigle reported for the Ad hoc District Criminal Court Committee that, pursuant to new legislation, centers have stopped charging an administrative fee. She indicated that currently the Committee was looking at some applications for DCC certification that raised qualifications/training issues. She indicated the Committee would be making a recommendation to Judge McCullough's Committee regarding those applicants. She explained that it had been agreed to keep the applications within her Committee because the Committee had been looking at some preliminary issues relating to the center sponsoring the applicants.

Judge Cash next turned to Ms. Anderson and asked if she had any comments relating to CME. She stated that she believes there will be an ample supply of mediation programs available for next year.

Judge Cash next asked Mr. Little to report on legislation. Mr. Little asked the Commission to re-approve the introduction of proposed legislation providing for mediation in civil district court. There followed some discussion about why the bill did not pass and it was suggested that chief district court judges had some concerns about the proposal and particularly how use of the two processes would be reconciled in civil district court. Mr. Little acknowledged that the original HB 38 said nothing about the intersection between arbitration and mediation in civil district court. Ms. Seigle asked Ms. Nesbitt if she knew more about this or other concerns regarding the legislation. Ms. Nesbitt responded that she believed the

arbitration process has performed well and is both efficient and cost effective. She suggested that attorneys may not like arbitration because they have to prepare for the hearing. Mr. Little suggested that Supreme Court Rules could sort matters out as to how the two processes would co-exist. Judge Lee asked whether that concern can be resolved by Supreme Court Rule? Ms. Seigle suggested that the Commission make an effort to learn what the stakeholders problems actually are before moving forward, again, with the proposed legislation. She noted that the conversation seems too speculative to her at this point. Ms. Dollar suggested raising the matter in front of the Chief Justice's Commission. Mr. Little moved that the Commission approve the concept of implementing mediation in district civil court and authorize a Commission member to put the matter before the CDCJ's Conference and any other appropriate bodies. The motion was approved. Judge Cash asked Judge Turner if he would be willing to address the CDCJs and he responded affirmatively. Mr. Little asked Judge Turner whether he thought district court judges were largely supportive of the effort with the understanding that the intersection between the two processes needs to be resolved. He said he thought the judges were largely supportive. After further discussion, Mr. Little was also authorized to pursue proposed revisions to G.S. §7A-38.2 that had been introduced earlier, but had not passed. After further discussion, Mr. Little was also authorized to pursue those revisions. It was clarified by Judge Cash that Mr. Little should pursue these matters in concert with the AOC and Mr. Murry. Ms. Seigle reiterated how important and necessary she thought it was for the AOC to know of the Commission's efforts and activities at the General Assembly.

Ms. Clare reported on the D&O insurance matter. She said she had asked for a formal opinion from the NC Attorney General on the matter of the Commission's potential liability and the likelihood that immunity provisions would protect it, whether any settlement or judgment would be covered by the State, and whether the AG would represent the body or individual members, if sued. She reported she had not been able to get one. Ms. Ratliff added that she had gotten a quote for a \$1 million in D&O coverage for a \$15,120 annual premium plus a deductible of \$50,000. The members were surprised at the high cost and Ms. Clare added that it was reflection of the recent NC Dental Board and Legal Zoom cases. Ms. Ratliff reported that only a couple of carriers are even writing D&O policies in NC anymore relative to boards and commissions licensing and regulating medical or legal providers. She added that the Department of Insurance was trying to create a pool of commissions and boards in order to negotiate lower premiums, but, that even if such a pool were to be created, it would not likely drive down the cost substantially. Several members opined that at that cost, D&O was simply not affordable for the DRC. With no motion forthcoming, the Commission determined not to pursue this matter further.

Ms. Ratliff gave her office report. She noted that she had the budget numbers for FY 2015/16, but had been asked to delay the budget report until November when Judge Cash intends to give a detailed report. She added that the office had been pleased to work with Mr. Sutton, was excited about his Report, and looked forward to working with the New Media Committee to implement his recommendations. She noted that the 2016/17 renewal period was moving forward and would conclude at the end of September. She said renewals were a little slow so far, but many mediators delay payment until the end of the period. She noted she would have a full report on the renewal period at the November meeting. The online renewal application, she reported, had required substantial modification and would next year as well and she expressed her gratitude to AOC technology staff whom she said had done a great job. Lastly, she added that during renewal

many mediators had been asking about CME. At that point, she discussed the office's efforts to facilitate approval of new CME programs and again thanked Ms. Cole and Ms. Dollar for their assistance. She also thanked Ms. Hopkins and Ms. Robinson for their efforts in spearheading the CME approval process. She reported that the Commission Annual Report for FY 2015/16 was almost complete and would be mailed soon. She also noted that the staff had gotten good feedback on the last newsletter and hoped to get another published this coming quarter. Ms. Ratliff also called attention to a number of proposed changes to the titles of certain Commission policy documents. All proposed name changes were approved by the Commission, except for the titles of the *Guidelines for Reviewing Pending Grievance/Complaint, etc.*, and *Recusal Guidelines for Board Members: DRC Disciplinary Hearings*. Ms. Gullick raised some concerns about the proposed titles to the two documents above and asked staff to consider her concerns. Lastly, Ms. Ratliff expressed her gratitude to AOC Director Judge Warren and the NC legislature for acknowledging the hard work of all court employees and approving raises for court staff, including DRC employees. She noted it was the first raise she had received in nearly six years.

Judge Cash next called for ex-officio reports. Ms. Nesbitt reported for the AOC focusing of efforts to capture caseload statistics for the mediated settlement programs (those statistics are incorporated in the minutes). She compared the MSC and FFS statistics to those reported last year. She noted that total number of cases ordered to MSC were down slightly this year. The number of cases settled prior to or during mediation was down 38%. She also noted that slightly more cases had been exempted this year. For the FFS Program she reported the number of cases referred this year had increased 17.5% over last year. The number of cases settled both before or during mediation increased 43.4%. The number FFS of cases exempted decreased by 40.2%. She added that the Clerk Program numbers were still very low, but that more districts were reporting. She added also that the arbitration program was a bit less efficient this year, with a slightly lower disposition rate.

Ms. Tolbert reported that the Trial Court Administrators were having their fall conference on November 8-10 and she would have a fuller report at the November DRC meeting. Ms. Holland noted that she was now stepping in for Mr. Igou as the new liaison for the NCBA Dispute Resolution Section. Mr. Schafer reported that 9,613 cases were referred to mediation last year and it was a record for the Industrial Commission. He added that the collective settlement rate for their mediators was 72%. Judge Stroud reported the Court of Appeals program was still moving forward.

Ex-officio reports concluded, Judge Cash asked about further business for the retreat. There being none, he adjourned the meeting, noting the next meeting was scheduled for November 18 in Building B of the NCJC with a hearing scheduled the day before.

August 19, 2016, Commission Meeting

#### ADDENDUM TO THE MINUTES

After the August 19, 2016, Commission meeting, staff began to process additional applications from Sponsors for CME credit for upcoming programs. In the process, staff received several inquiries about the DRC CME Policy that required Commission action:

1. Will a presenter at a CME Program be awarded CME credit, and if so, in what amount?
2. Will partial-hour CME credit be approved?

Neither of these issues had previously been addressed by the Mediator Certification and Training Committee or the Commission as a whole. In order to address these questions in a timely manner, the Commission considered the recommendations of the Mediator Certification and Training Committee and approved by majority vote by electronic mail several minor changes to the DRC implementation documents, including the following additions to the Procedures Implementing DRC CME Policy:

“11. An approved CME program shall be a minimum of 1.0 hour in duration. No CME credit will be available for partial-hour programs. Approved programs between 1.0 and 2.0 hours in duration will be rounded down to 1.0 hour for CME credit.

12. CME credit shall be awarded to presenters of programs approved by the Commission for CME credit on an hour for hour basis. A presenter will not receive additional CME credit for partial-hour programs, or any portion of a program between 1.0 and 2.0 hours. A presenter on a program panel who participates during the full program will receive an hour for hour credit under this paragraph, regardless of the length of his/her specific presentation during the program.”

# Dispute Resolution Commission

## MINUTES

Friday, May 2, 2016

NCJC Raleigh, NC

Members present: Cash, C. Anderson, Armeña, Dollar, Evans, Gullick, Long, McCullough, Ponton, Seigle, and Webb. Ex-officio members, guests, and staff present: A. Anderson, Igou, Leazer, Little, Minor, Nease Brown, Steelman, Stroud, Tolbert, Turner, Hopkins, Ratliff, and Robinson. The following sent their regrets: Caldwell, J. Clare, T. Clare, Hicks, Vincent, Beason, Henderson, Laney, Lee, Nesbitt, and Schafer.

Judge Cash welcomed everyone and introduced new ex-officio members Amanda Leazer (NC Judicial Support Staff Conference) replacing Tueresa Hayden and Brandi Tolbert (NC Trial Court Administrators Conference) replacing Ellen Rose.

Judge Cash next called for approval of the minutes. On page 2, Mr. Armeña clarified that he had asked for the survey to note that it would only take a few minutes to complete, rather than "less than 5 minutes". With that change, the minutes were approved as submitted.

Judge Cash next reported for the Executive Committee that Commission chairs emeriti had met to begin reviewing proposed changes to the Supreme Court's Rules for the DRC. He added that once this Committee has completed its work, the draft will go the Ad hoc Committee composed of Committee chairs and then to the full Commission for consideration. Judge Cash also reported that staff had assembled a packet of rule changes adopted by the Commission to date for referral to Mr. Laney as chair of the ADR Committee of the State Judicial Council.

Judge McCullough next reported for the Mediator Certification and Training Committee and presented proposed "Guidelines for Mediators Regarding the Implementation of the Dispute Resolution Commission's Mandatory CME Policy". The question arose as to whether these should be designated as guidelines or a policy. Judge McCullough proposed the document be retitled as a policy. The Policy was adopted with that change. He next highlighted the proposed "Guidelines for Sponsors of CME Programs". Judge McCullough first suggested it be retitled, "Policy for Sponsors of CME Programs". Ms. Anderson noted that she thinks the State Bar typically needs 60 days prior to the date of a program to get it approved for CLE credit. As such, it was further suggested that Paragraph 3 be changed from 45 days to 60 days. Ms. Hopkins was asked to address a few additional concerns relating to the Policy and the form for reporting attendance at CME program and to report back after lunch. Judge Cash noted that Ms. Anderson had agreed to serve as chair of a programs committee to assemble a list of potential CME programs and thanked her. Ms. Anderson said that she may be taking a survey of mediators to get an idea of the kinds of programming they think would be most beneficial.

Staff relayed that Judge Caldwell had no report for the MSC Program Oversight Committee.

Mr. Long reported for the District Court Program Oversight Committee that the District Criminal Court Mediation Program video survey had been sent out and the office is awaiting the results.

Ms. Gullick reported that the Standards and Advisory Opinions Committee had developed a survey on mediator experiences with interpreter/translators and had distributed it to all certified mediators. Ms. Hopkins noted that the results should be back by the end of May. Next Ms. Gullick called attention to Proposed AO No. 32. She explained that the AO addresses an FFS mediation involving a pro se Chinese speaking plaintiff and a pro se English speaking defendant. The AO, she explained, gave best practice advice regarding whether a family member can serve as an interpreter, whether the agreement should be drafted in English or Chinese, and how to alert the district court judge that a non-English party was involved in the mediation. Judge Cash asked Ms. Seigle and Mr. Minor whether they had any concerns relative to their experiences with the DCC Mediation Program. Mr. Minor noted this is a difficult issue, but he believes the AO addresses it well given existing fiscal constraints. Ms. Nease Brown expressed concern about the last sentence in Section 1 of the opinion portion of the AO. She suggested that the language be softened. Mr. Long suggested leaving it as is with the Commission developing a policy for mediators working with interpreters/translators in mediation. Ms. Nease Brown believes the language is harsh and suggested that the text say that the interpreter be “discouraged from engaging in” conversations rather than the interpreter “should not engage in” conversations. Judge Anderson suggested the following replacement for the last two sentences, “However the mediator shall clarify that the interpreter will relate as completely as possible all that is said during the conference and not just a summary; and encourage the interpreter not to engage in a conversation with a party separate and apart from the specific statements made and/or questions asked.” The AO was approved with Judge Anderson’s change and Ms. Ratliff was asked to post it.

Judge Anderson said that the GDC Committee had no report, but would be meeting over lunch to discuss an applicant who had not disclosed misdemeanor convictions on his DCC application.

Ms. Seigle reported that the ad hoc District Criminal Court Committee has been quiet. She asked Mr. Minor to give an update on HB 38. He reported that amendments to HB 38 are not moving, as the House has been addressing other matters. He added that the Network is interested in submitting all MNNC district criminal court mediators for DRC certification. He wants to submit their applications as a package through the Network rather than piecemeal. He added that the Network will be asking the DRC to seek legislation making the MNNC’s ex-officio seat an appointed, voting seat. Ms. Seigle’s Committee will address this request.

Mr. Armeña next gave a PowerPoint presentation on the work of the Social/New Media Committee. He first explained why he had suggested to Judge Cash that the “Social Media Committee” be renamed the “New Media Committee”, noting that “new media” has become the de facto term for newer communications platforms developed post email and the web. Mr. Armeña explained that websites are where you go to retrieve information, new media is where you go to learn what is trending. He reported that Judge Cash had approved the suggestion and the Committee has been renamed the New Media Committee. He reported that the Committee had reviewed a number of documents addressing ethics and new media and also court use of new media. Most of the sources the Committee consulted, he noted, were favorable to the use of new media by the courts; but that use of these tools was in its infancy and there were potential pitfalls that would need to be addressed, e.g., the need to actively manage accounts and post regularly. He added that Ms. Ratliff had created a tentative list of

issues for the Committee to consider as it moves forward with its work. He added that the Committee will also be looking at revamping the Commission's website.

Ms. Ratliff noted that an intern, Scott Sutton, from Creighton, will be assisting the New Media Committee with its work. She spoke briefly about Mr. Sutton's experience and noted that the internship will run about eight weeks. Ms. Anderson noted new media could be used to communicate CME information. Judge Cash added it could also be used to communicate information about observation opportunities. Judge McCullough noted that Florida has worked hard to give judges and court personnel tools to keep them out of trouble when using new media. He noted that both judges and jurors had experienced problems with new media.

Judge Cash asked Mr. Little to report on legislation. Mr. Little affirmed what Mr. Minor had said, i.e., that matters are not moving very fast, if at all.

Judge Webb was asked to report on the work of the Chief Justice's Commission on the Administration of Law and Justice and specifically on the activities of the Criminal Investigation and Adjudication Committee, which he chairs. Judge Webb reported that the Committee is exploring a number of important issues in the criminal arena: indigent defense services, increasing the juvenile age to 18 for criminal prosecution, pretrial release, and criminal case management. Judge Webb noted that he fully expects his Committee to recommend that ADR be used more widely in North Carolina's criminal courts.

Ms. Seigle reported she will be speaking to the Assistant District Attorney's Conference in June about the District Criminal Court Mediation Program. Ms. Ratliff added that Conference staff are interested in helping DAs and ADAs learn more about the Program. She said they anticipate there will be additional opportunities to do that following Ms. Seigle's presentation. Judge Cash asked how many counties offer mediation in their district criminal courts. Mr. Minor responded that 53 counties are regularly mediating district criminal court cases. The Network would, he suggested, like to see the Program expand. Judge Turner suggested that Judge Cash promote the Program at the upcoming District Court Judges Conference. Judge Tuner noted that there is a lot of turnover on the district court bench and many judges simply may not be familiar with mediation in that venue. Judge Anderson observed that the Program can be more difficult to implement in rural areas where it is hard to get a critical mass of cases sufficient to justify a mediator's presence. Mr. Minor observed that this Program is not a one size fits all proposition and that programs operate differently throughout the state. He added that issues of indigency and space are challenging. Many courthouses, he noted, don't have rooms to dedicate to mediation. Lastly, Mr. Minor added that the number of 50 C injunction cases is growing and these matters are often amenable to mediation.

After lunch, Judge McCullough presented additional revisions to the proposed DRC Policy for Sponsors of CME Programs with paragraphs 3, 4, and 5 rewritten by Ms. Hopkins. The Policy was adopted with the revisions and staff was directed to post it for comment for 30 days. In light of the adoption of the CME requirement, Mr. Little asked that the Committee review the lapsed, inactive, out-of-state, and dated training policies. Judge Cash asked staff to facilitate the Committee's review of these policies.

Judge Cash next called for liaison reports. Ms. Leazer reported that the NC JSSC had held their conference. She reported that the conference had been working to secure a 4% raise for all

court staff and officials. She said the House had agreed to a 2% raise and a \$500 bonus. Judge Anderson asked what the Senate will do with the proposal. Ms. Leazer responded that she does not believe the Senate will go lower than 2%. She observed that Judge Warren has been working hard on behalf of court staff and officials. She also noted that this was the first time that staff had been sent to the legislature to advocate for salary increases. Ms. Talbert reported that the NC Trial Court Administrators Conference had also held its annual conference and she echoed Ms. Leazer's words relative to the legislative effort and praised Judge Warren's initiatives.

Mr. Igou reported on the new Mediators Available Pro Bono Project (MAPP). MAPP is a Dispute Resolution Section project through which volunteer mediators will provide up to 3 hours of free mediation services for parties referred by Legal Aid and who are involved in disputes valued at \$10,000 or less. Mr. Igou thanked Ann Anderson and Jackie Clare for their assistance with the Project. He also noted that the DCC video will be highlighted on the scroll at the NCBA's annual meeting. Mr. Igou also noted that the Section is continuing to look at the Clerk Mediation Program. Ms. Hopkins noted that she had recently gotten an inquiry about a foreclosure matter which the caller wanted to refer to mediation. Ms. Seigle noted that she has done mediations of adoption disputes and believes those disputes are very amenable to mediation.

Ms. Nesbitt could not attend but left some preliminary caseload statistics for the MSC and FFS Programs. Ms. Hopkins reported that Ms. Nesbitt had asked members not to be alarmed by the number of "0s" in the columns or the negative numbers in a handful of districts as it was still early in the reporting process. Judge Cash indicated that the Commission will look forward to a full report from Ms. Nesbitt at the August meeting.

Mr. Armeña noted that the Commission should have a page on the Court's internal Juno site where it could post information for court staff, such as updates for the Benchbooks. He asked the Commission if it would be willing to allow that and the Committee was authorized to move forward.

Judge Cash next called for the office report. Ms. Ratliff noted that the office was preparing for the 2016/17 certification renewal period. She added that she had written an article for the NC Conference of District Attorneys journal. She noted a newsletter had been published last month and it contained interesting articles about Judge Webb and his work with the Chief Justice's new Commission and about a SC mediator teaching mediation concepts to prison inmates. The staff, she added, had recently entertained judges and prosecutors from Estonia and Turkey. She noted that she had been trying to get insurance quotes for D&O insurance for the Commission, but had run into some roadblocks. Lastly, she noted that Ms. Robinson had designed a new masthead for Commission emails and she passed a copy around.

Judge Cash announced that the next meeting will be August 18-19 in Raleigh (annual meeting), then November 18 at the NCBA in Cary, and then February 10 or 24 in Greensboro. He noted that Judge Evans had also offered space in the Mecklenburg courthouse. There being no further business, he adjourned the meeting.

# Dispute Resolution Commission

## MINUTES

Friday, February 26, 2016  
NCJC, Raleigh, NC

Members present: Cash, C. Anderson, Armeña, Caldwell, T. Clare, Dollar, Evans, Gullick, Hicks, Long, McCullough, Seigle, Spence, and Vincent. Ex-officio members, guests, and staff present: Anderson, Beason, J. Clare, Estle, Hayden, Henderson, Hopkins, Igou, Laney, Little, Minor, Nesbitt, Ratliff, Robinson, Schafer, Stroud, Turner and Weaver. The following sent regrets: Judge Webb, Judge Lee, and Ms. Henderson.

Judge Cash welcomed everyone and asked attendees to introduce themselves. Judge Cash noted that guest Regan Weaver had been a member of the original task force which explored the question of whether to implement mediated settlement conference programs in North Carolina's courts. Judge Cash reported that several Commission members had attended the NCBA Dispute Resolution Section's Annual Meeting held in Charlotte. He added that he, Judge Anderson, Ms. Gullick, and Mr. Little had given a presentation on program rules and ethics. He said he thought their portion of the program had been well received. He also reported that Ms. Ratliff had been the recipient of the Section's 2016 Peace Award.

Judge Cash called for approval of the minutes and they were approved as submitted. Judge Cash next reported for the Executive Committee noting that Judge Lee had retired. He also reported that he and staff had been collaborating on an article for the *Bar Quarterly* highlighting events of the Commission's first 20 years. He thinks it may be printed in the summer edition. Judge Cash observed that the process of writing the article had made him ponder the next 20 years. He believes that NC citizens will be expecting more from mediators in the future and that well qualified individuals need to be available. He asked Commission members to be thinking of what the next 20 years will hold for the Commission and how the Commission can continue to remain a positive force for dispute resolution in North Carolina.

Judge McCullough reported for the Mediator Certification and Training Committee. The DRC CME Policy was passed by the Commission at the August, 2015, meeting retreat. Thereafter it was posted for comment, with extensive comments on both sides being made. Judge McCullough reported that he heard some gasps and grumbling relative to continuing mediator education (CME) at the Section's annual meeting earlier this month, but had also heard positive comments. Judge Cash reported that comments on the posted CME proposal were about 50/50, pro and con. Judge Cash called for a vote of final adoption of the DRC CME Policy. After motion and a second, the Policy was approved. Judge Cash also noted that a question regarding lapsed and inactive status

had been raised by Judge Lee's retirement. Judge Cash noted that CME is the more pressing issue, and asked the Committee to finalize the logistics of implementing the CME policy before it took up the lapsed/inactive status issue.

Judge Caldwell reported for the Superior Court Program Oversight Committee. He indicated that the Committee was making a proposal to amend MSC Rule 15 in light of a concern raised by Business Court Judge Mike Robinson. Mr. Little explained that the proposal addresses a gap in the MSC Program Rules by providing for business court judges to refer complex business cases to the MSC Program. The proposal was adopted unanimously.

Mr. Long reported for the District Court Oversight Committee. He noted that the Committee was interested in learning how the district criminal court video had been received. To that end, it had prepared a survey and wanted the Commission's comments on it. Mr. Armeña suggested adding a note to the survey instrument clarifying that would take only a few minutes to complete. Ms. Nesbitt suggested adding a line to permit respondents to report any obstacles to showing the video. Mr. Minor responded that some facilities may not be equipped to show the video and that there may also be issues with motivating judges to watch and promote it. Judge Stroud asked about YouTube and Ms. Anderson noted the video was already posted there. Judge Vincent suggested that an announcement about the video could be made at the District Court Judges Conference. Commission staff will inquire about whether the video can be shown to the judges. Mr. Armeña suggested working with the AOC to redirect the link to the video to make it more accessible to viewers. Ms. Robinson will look into that. Ms. Dollar suggested adding the video to Juno and the [www.ncourts.org](http://www.ncourts.org) website. Ms. Ratliff reported that DA Conference staff had asked her about having a presentation on district criminal court mediation at the DA's June conference and wanted the video shown there. She added that Ms. Seigle had agreed to make a presentation at that conference. Mr. Long asked that the Commission approve the survey for distribution and it was approved with the changes noted above.

Ms. Gullick reported for the Standards and Advisory Opinions Committee. She began with a discussion of the issue of interpreters/translators as it relates to individuals covered by the Americans with Disabilities Act (ADA) and those not proficient in English (LEP). She noted that ADA provisions apply to mediators and this is an issue that has not been previously considered by the Commission or the AOC, as far as she knows. She noted that she has distributed a manuscript by Griff Morgan which addressed ADA and language proficiency (LEP) issues to the Commission and she asked everyone to read it. Judge Vincent suggested that she would like to see the Commission be proactive on this issue. Mr. Laney observed that it was a difficult issue in that he was not sure the government really understood ADA requirements and how to enforce them. Ms. Seigle reported that ADA interpreters are provided at no charge in Medicaid mediations. Mr. Minor noted that centers are picking up the tab for both ADA and LEP interpreters in district criminal court. Ms. Gullick noted that Ms. Ratliff had done a survey of

Southeastern states on the interpreter issue and that it generally came down to whether a state regarded mediation proceedings as “court proceedings”. If so, then a state was more likely to provide ADA and/or LEP interpreters to parties. Judge Turner noted there is a real issue relative to interpreter funding, i.e., the AOC has too little money to pay for interpreters. At Ms. Gullick’s request, Ms. Hopkins reported on a Georgia case in which a verdict was thrown out and a Gambian native received a new trial on the basis that he had inadequate interpreter assistance at his murder trial. Ms. Gullick noted this case raises important issues and her Committee will continue to explore this matter. Mr. Schafer noted he is seeing more LEPs at IC mediations, but ADA individuals are rarely involved. Judge McCullough observed, that under current MSC/FFS Rule 7.B, a court-appointed mediator would be unable to seek reimbursement for costs s/he incurs in making an interpreter available for an ADA or LEP individual, assuming the court would not provide one. Judge Caldwell noted that interpreter qualifications are important and that a family member or friend serving as an interpreter may not understand legal or forensic terminology. Mr. Little clarified that the issue before Ms. Gullick’s Committee was an ethical one -- whether a mediator may simultaneously act as both mediator and interpreter? Ms. Gullick noted this is happening in district criminal court mediation programs. She observed that, though it may not be an ideal situation, it is often the only way folks can participate. Ms. Gullick asked staff whether mediators could be polled to learn whether they are experiencing situations where ADA or LEP interpreters are needed and how they are responding.

Ms. Gullick next called attention to a proposed revision to MSC Rule 8.B(1)(a)(ii). She noted that the revision was necessitated by a change in State Bar rules which no longer require an attorney, under certain circumstances, to be a graduate of an ABA accredited law school. Judge Turner suggested citing the actual State Bar rule number in MSC Rule 8.B(1)(a)(ii). Ms. Seigle expressed concern that the State Bar had revised its rule to allow licensure of attorneys from non-ABA accredited schools. She believes standards should be high. The rule was approved with the inclusion of a reference to the State Bar rule. Ms. Gullick indicated that the Committee will do some word smithing and present a revised version of MSC Rule 8.B(1)(a)(ii) after lunch. Ms. Gullick next reported on changes to the Advertising Guidelines. The proposed modifications to the Advertising Guidelines were approved without change and will be posted for comment.

Judge Anderson reported for the Grievance and Disciplinary Committee by providing an update on matters before the Committee this quarter. He noted that two matters were related to mediators decertified by the Committee and four were related to applications or requests for provisional pre-training approval. Judge Anderson noted that all the application issues involved youthful indiscretions related to the use of alcohol.

Ms. Clare next reported on communications with the Attorney General’s office in which the Commission sought an AG’s Opinion on issues of Commission liability in the wake of the NC Dental Board case. Commission staff wrote to the AG’s office in August, 2015, and in November, received an advisory letter in response from Special Deputy AG Staci

Meyer. Ms. Clare noted that an advisory letter does not carry the weight of a formal opinion. The letter indicated that the Commission, as a State agency, is covered by the Tort Claims Act. She added that since the Tort Claims Act authorizes claims against State agencies, and not individual employees or agents of an agency, that any action brought pursuant to the Tort Claims Act and against a Commission member or its staff should be dismissed. Ms. Meyer also indicated that the AG's office would likely defend individual Commission members, ex-officio members, and staff who are sued for a claim covered under the Act. However, that said, Ms. Meyer noted that there is some broad language that would permit the State to decline representation where it was in the State's interest to do so. Ms. Clare indicated that the letter was unclear regarding payment of judgments, i.e., Ms. Meyer suggests that the Commission would be liable for the first \$150,000, assuming it had the funds to pay, but says that it unclear as to payment of the remainder. Ms. Clare noted this brings up the issue of liability insurance. She noted that whether to purchase liability insurance really comes down to a business judgment decision. She added that in order to purchase liability insurance, the Commission would first need to obtain permission from the Insurance Department. Ms. Clare noted that she is a cautious person and suggests that the Commission should consider such a purchase. Mr. Little asked Ms. Clare what kinds of situations she was concerned about. She responded it was situations where certification was denied or revoked and the mediator/applicant sues. She noted that has, in fact, happened before and Ms. Ratliff added that the same individual also filed complaints against Commission members with the State Bar and NCSEC. Ms. Clare asked Commission staff to look into the cost to purchase insurance for the May meeting. Judge Turner asked whether we could get an actual Opinion from the AG. Ms. Clare noted that she had originally sought an Opinion.

Judge Cash asked Mr. Little for a legislative report. Mr. Little noted that the Commission's legislation was still stuck in the Senate.

Ms. Seigle reported for the Ad hoc District Criminal Court Mediation Program Committee. Ms. Seigle noted proposed changes to HB 38 and thanked Messrs. Laney, Minor, and Igou for their work in hammering out the proposed changes. She then asked Mr. Laney to walk the group through the proposed changes. He noted that the principal change was to require that payment of the \$60.00 dispute resolution fee be made to the Clerk of Superior Court and that no mediator be authorized to receive any payment directly from any participant. Mr. Little expressed concerns about language in subsection (a) providing for all complainants and defendants... He suggested that language could be construed as mandating that the fee is due only if everyone agrees to participate. The group agreed to strike "all" and insert, "in which any complainants and any defendants agree to enter into mediation,..." . Mr. Long expressed concern that DAs may view subsection (b) as infringing on their control of their dockets. Judge Cash congratulated the Committee on hammering the matter out. Ms. Seigle called for a vote on that change after reading the following Motion:

“The Committee moves that the Dispute Resolution Commission approve and recommend to the General Assembly the amendment to NCGS 7A-38.5 and 7A-38.7 noted in the attached text. It is recommended that this be proposed as an amendment to HB 38, which passed the House in the 2015 session and is now in the Senate. This motion does not endorse any of the existing language in the statute and the Committee intends to take up the subject for further amendments to these and possibly other statutes in Chapter 7A, Article 5, or any other statutes that may address or apply to the North Carolina District Criminal Court Mediation Program.”

The Motion was adopted with the change noted above.

Ms. Gullick noted further revisions to MSC Rule 8 that were agreed upon over lunch. These changes were approved by the Commission as submitted.

Judge McCullough reported that over lunch the Mediator Certification and Training Committee had agreed to propose a CME requirement of 2 hours annually. Eligible CME must address: duties of the mediator, rules, Standards, AOs, and/or case law updates that relate to mediation. Reporting would begin with the 2017/18 renewal period. Providers will need to notify the Commission of attendees at CME approved programs. Mediators will be notified soon of the new requirement. Ms. Seigle asked whether the Commission would receive any fee from providers/attendees. Mr. Little noted that was worth thinking more about, but it was not part of the current proposal. The proposal was approved with Mr. Schafer’s clarification that it be made clear that the policy also applied to the NCIC. Judge Cash asked Judge McCullough to have his Committee meet again prior to the May Commission meeting to hammer out more details regarding the reporting process.

Ms. Seigle next updated the group on the work of the Chief Justice’s Commission on Law and the Administration of Justice (NCCALJ) and the NCCALJ’s Criminal Investigation and Adjudication Committee chaired by Judge Webb. She reported that Ms. Ratliff and Mr. Laney had spoken about the DCC Program at the Committee’s January meeting and the video was shown. She added that the Committee is looking both into expanding mediation in NC’s district criminal courts and also at how the process might be used in less serious felony matters. Ms. Seigle suggested that the Commission may want to consider making recommendations on alternative dispute resolution to Judge Webb’s Committee or to the larger NCCALJ. She added that Will Robinson, staff to the NCCALJ, has said he would be happy to make an extended presentation to the Commission to further explain the NCCALJ’s role and work. Ms. Seigle added that the NCCALJ’s website is [www.nccalj.org](http://www.nccalj.org). Ms. Seigle noted that the members of the NCCALJ are very high caliber individuals.

Mr. Armeña reported for the Ad hoc Social Media Committee. He first reported that the Committee recommended its name be changed to the “New Media Committee”, so that it could address both website and social media issues. This was approved and he noted that the Committee would have a much fuller report for the May meeting.

Judge Cash next called for ex-officio reports. Ms. Hayden reported for the NCJSS Conference is scheduled for April, 2015, in Kitty Hawk. Mr. Igou reported for the Section that its attendance at the annual section meeting this year was record breaking. He noted that the Section is working on a video that explains/describes some dispute resolution alternatives. Mr. Laney reported for the federal courts that the Chief Mediator for the 4<sup>th</sup> Circuit will be retiring late in May. Mr. Minor thanked the Ad hoc Criminal District Court Committee for its work and said he is very pleased by the level of cooperation that characterized this effort. He reported that in the next 12-18 months, he expects that all center mediators will submit their mediators for DRC certification. Ms. Nesbitt noted that reporting for FFS districts is slowly improving relative to accuracy. She added that the number of cases being arbitrated is increasing as is the number of cases resolving via that process. Though the numbers are still very small, she added there is also an increase in the number of cases being referred to mediation by Clerks. Two-thirds of Clerks are now reporting which indicates to her that awareness of the Clerk Program is growing. Ms. Hicks responded that Clerks struggle with referring cases to mediation because estate matters are all so different. She also noted that attorneys do not appear favorably disposed toward mediation in Clerk matters. Mr. Schafer reported that Governor McCrory has made some changes in the NCIC leadership. Three new Deputy Commissioners have been appointed and Mr. Schafer indicated that he had been re-appointed to a six-year term.

Ms. Hopkins next reported on the Tennessee meeting for ADR court staff and policy makers that she, Ms. Ratliff, and Judge Webb had attended. She indicated that she and Ms. Ratliff had learned a great deal and the relationships built at these meeting paid off when staff attempted to survey other states, as had happened recently with the effort to collect data on interpreters/translators and social media.

Lastly, Ms. Ratliff gave her office report. She noted that as usual the office had been quiet during the holidays. She first asked all Commission members to be sure to get their NCSEC SEI reports in timely or face possible fines. She reported that Ms. Robinson had been working with an AOC business analyst to try to update the Commission’s accounting system and move away from the use of QuickBooks. QuickBooks will be replaced with a more seamless system using the office’s internal software. She added that staff are also working with AOC Technology to create an on-line renewal application for DCC mediators. Ms. Hopkins added that the Commission is also looking for ways to use its website to help match mediators with certification applicants looking for observer opportunities. She suggested that matter may need to go back to Judge McCullough’s Committee for additional consideration. Lastly, Ms. Ratliff next reported that Ms. Hopkins had spoken at the Durham County Bar Association’s annual CLE

meeting on the topics of confidentiality, inadmissibility, and the drafting of agreements and had received positive feedback.

Judge Cash next asked about some potential dates for the winter meeting. Ms. Robinson was asked to contact the NCBA and inquire whether a meeting is room available for either November 18 or December 2. Judge Cash whether there was other business and Judge Caldwell noted that Mr. Little's presentation at the Superior Court Judge Conference had been well received. There being no further business, Judge Cash thanked everyone for coming and adjourned the meeting.